

112TH CONGRESS
1ST SESSION

S. 1313

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2011

Mr. WHITEHOUSE (for himself, Mr. VITTER, Mr. LIEBERMAN, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Estuaries Act
5 of 2011”.

6 **SEC. 2. NATIONAL ESTUARY PROGRAM AMENDMENTS.**

7 (a) PURPOSES OF CONFERENCE.—

8 (1) DEVELOPMENT OF COMPREHENSIVE CON-
9 SERVATION AND MANAGEMENT PLANS.—Section

1 320(b) of the Federal Water Pollution Control Act
2 (33 U.S.C. 1330(b)) is amended by striking para-
3 graph (4) and inserting the following:

4 “(4) develop and submit to the Administrator a
5 comprehensive conservation and management plan
6 that—

7 “(A) identifies the estuary and the associ-
8 ated upstream waters of the estuary to be ad-
9 dressed by the plan, with consideration given to
10 hydrological boundaries;

11 “(B) recommends priority protection, con-
12 servation, and corrective actions and compliance
13 schedules that address point and nonpoint
14 sources of pollution—

15 “(i) to restore and maintain the chem-
16 ical, physical, and biological integrity of
17 the estuary, including—

18 “(I) restoration and maintenance
19 of water quality, including wetlands
20 and natural hydrological flows;

21 “(II) a resilient and diverse in-
22 digenous population of shellfish, fish,
23 and wildlife; and

24 “(III) recreational activities in
25 the estuary; and

1 “(ii) to ensure that the designated
2 uses of the estuary are protected;

3 “(C)(i) identifies healthy and impaired wa-
4 tershed components, including significant ad-
5 verse impacts to the estuary outside the area
6 addressed by the plan that could affect the
7 water quality and ecological integrity of the es-
8 tuary, and the sources of those adverse impacts,
9 by carrying out integrated assessments that in-
10 clude assessments of—

11 “(I) aquatic habitat and biological in-
12 tegrity;

13 “(II) water quality; and

14 “(III) natural hydrologicalal flows;
15 and

16 “(ii) provides the applicable Federal or
17 State authority with information on any identi-
18 fied adverse impacts and the sources of those
19 adverse impacts;

20 “(D) considers current and future sustain-
21 able commercial activities in the estuary;

22 “(E) addresses the impacts of the chang-
23 ing climate on the estuary, including—

24 “(i) the identification and assessment
25 of vulnerabilities in the estuary;

1 “(ii) the development and implementa-
 2 tion of adaptation strategies; and

3 “(iii) the potential impacts of changes
 4 in sea level on estuarine water quality, es-
 5 tuarine habitat, and infrastructure located
 6 in the estuary;

7 “(F) increases public education and aware-
 8 ness with respect to—

9 “(i) the ecological health of the estu-
 10 ary;

11 “(ii) the water quality conditions of
 12 the estuary; and

13 “(iii) ocean, estuarine, land, and at-
 14 mospheric connections and interactions;

15 “(G) includes performance measures and
 16 goals to track implementation of the plan; and

17 “(H) includes a coordinated monitoring
 18 strategy for Federal, State, and local govern-
 19 ments and other entities.”.

20 (2) MONITORING AND MAKING RESULTS AVAIL-
 21 ABLE.—Section 320(b) of the Federal Water Pollu-
 22 tion Control Act (33 U.S.C. 1330(b)) is amended by
 23 striking paragraph (6) and inserting the following:

24 “(6) monitor (and make results available to the
 25 public regarding)—

1 “(A) water quality conditions in the estu-
 2 ary and the associated upstream waters of the
 3 estuary identified under paragraph (4)(A);

4 “(B) watershed and habitat conditions that
 5 relate to the ecological health and water quality
 6 conditions of the estuary; and

7 “(C) the effectiveness of actions taken pur-
 8 suant to the comprehensive conservation and
 9 management plan developed for the estuary
 10 under this subsection;”.

11 (3) INFORMATION AND EDUCATIONAL ACTIVI-
 12 TIES.—Section 320(b) of the Federal Water Pollu-
 13 tion Control Act (33 U.S.C. 1330(b)) is amended—

14 (A) by redesignating paragraph (7) as
 15 paragraph (8); and

16 (B) by inserting after paragraph (6) the
 17 following:

18 “(7) provide information and educational activi-
 19 ties on the ecological health and water quality condi-
 20 tions of the estuary; and”.

21 (4) CONFORMING AMENDMENT.—The sentence
 22 following section 320(b)(8) of the Federal Water
 23 Pollution Control Act (as so redesignated) (33
 24 U.S.C. 1330(b)(8)) is amended by striking “para-
 25 graph (7)” and inserting “paragraph (8)”.

1 (b) MEMBERS OF CONFERENCE; COLLABORATIVE
2 PROCESSES.—

3 (1) MEMBERS OF CONFERENCE.—Section
4 320(c)(5) of the Federal Water Pollution Control
5 Act (33 U.S.C. 1330(c)(5)) is amended by inserting
6 “not-for-profit organizations,” after “institutions,”.

7 (2) COLLABORATIVE PROCESSES.—Section
8 320(d) of the Federal Water Pollution Control Act
9 (33 U.S.C. 1330(d)) is amended—

10 (A) by striking “(d)” and all that follows
11 through “In developing” and inserting the fol-
12 lowing:

13 “(d) USE OF EXISTING DATA AND COLLABORATIVE
14 PROCESSES.—

15 “(1) USE OF EXISTING DATA.—In developing”;
16 and

17 (B) by adding at the end the following:

18 “(2) USE OF COLLABORATIVE PROCESSES.—In
19 updating a plan under subsection (f)(4) or devel-
20 oping a new plan under subsection (b), a manage-
21 ment conference shall make use of collaborative
22 processes—

23 “(A) to ensure equitable inclusion of af-
24 fected interests;

1 “(B) to engage with members of the man-
2 agement conference, including through—

3 “(i) the use of consensus-based deci-
4 sion rules; and

5 “(ii) assistance from impartial
6 facilitators, as appropriate;

7 “(C) to ensure relevant information, in-
8 cluding scientific, technical, and cultural infor-
9 mation, is accessible to members;

10 “(D) to promote accountability and trans-
11 parency by ensuring members are informed in
12 a timely manner of—

13 “(i) the purposes and objectives of the
14 management conference; and

15 “(ii) the results of an evaluation con-
16 ducted under subsection (f)(6);

17 “(E) to identify the roles and responsibil-
18 ities of members—

19 “(i) in the management conference
20 proceedings; and

21 “(ii) in the implementation of the
22 plan; and

23 “(F) to seek resolution of conflicts or dis-
24 putes as necessary.”.

1 (c) ADMINISTRATION OF PLANS.—Section 320 of the
 2 Federal Water Pollution Control Act (33 U.S.C. 1330) is
 3 amended by striking subsection (f) and inserting the fol-
 4 lowing:

5 “(f) ADMINISTRATION OF PLANS.—

6 “(1) APPROVAL.—Not later than 120 days
 7 after the date on which a management conference
 8 submits to the Administrator a comprehensive con-
 9 servation and management plan under this section,
 10 and after providing for public review and comment,
 11 the Administrator shall approve the plan, if—

12 “(A) the Administrator determines that
 13 the plan meets the requirements of this section;
 14 and

15 “(B) each affected Governor concurs.

16 “(2) COMPLETENESS.—

17 “(A) IN GENERAL.—If the Administrator
 18 determines that a plan is incomplete under
 19 paragraph (1) or (7), the Administrator shall—

20 “(i) provide the management con-
 21 ference with written notification of the
 22 basis of that finding; and

23 “(ii) allow the management conference
 24 to resubmit a revised plan that addresses,
 25 to the maximum extent practicable, the

1 comments contained in the written notifi-
2 cation of the Administrator described in
3 clause (i).

4 “(B) RESUBMISSION.—If the Adminis-
5 trator determines that a revised plan submitted
6 under subparagraph (A)(ii) remains incomplete
7 under paragraph (1) or (7), the Administrator
8 shall allow the management conference to re-
9 submit a revised plan in accordance with sub-
10 paragraph (A).

11 “(C) SCOPE OF REVIEW.—In determining
12 whether to approve a comprehensive conserva-
13 tion and management plan under paragraph (1)
14 or (7), the Administrator—

15 “(i) shall limit the scope of review to
16 a determination of whether the plan meets
17 the minimum requirements of this section;
18 and

19 “(ii) may not impose, as a condition
20 of approval, any additional requirements.

21 “(3) FAILURE OF THE ADMINISTRATOR TO RE-
22 SPOND.—If, by the date that is 120 days after the
23 date on which a plan is submitted or resubmitted
24 under paragraph (1), (2), or (7) the Administrator

1 fails to respond to the submission or resubmission in
 2 writing, the plan shall be considered approved.

3 “(4) FAILURE TO SUBMIT A PLAN.—If, by the
 4 date that is 3 years after the date on which a man-
 5 agement conference is convened, that management
 6 conference fails to submit a comprehensive conserva-
 7 tion and management plan or to secure approval for
 8 the comprehensive conservation and management
 9 plan under this subsection, the Administrator shall
 10 terminate the management conference convened
 11 under this section.

12 “(5) IMPLEMENTATION.—

13 “(A) IN GENERAL.—On the approval of a
 14 comprehensive conservation and management
 15 plan under this section, the plan shall be imple-
 16 mented.

17 “(B) USE OF AUTHORIZED AMOUNTS.—
 18 Amounts authorized to be appropriated under
 19 titles II and VI and section 319 may be used
 20 in accordance with the applicable requirements
 21 of this Act to assist States with the implemen-
 22 tation of a plan approved under paragraph (1).

23 “(6) EVALUATION.—

24 “(A) IN GENERAL.—Not later than 5 years
 25 after the date of enactment of this paragraph,

1 and every 5 years thereafter, the Administrator
2 shall carry out an evaluation of the implementa-
3 tion of each comprehensive conservation and
4 management plan developed under this section
5 to determine the degree to which the goals of
6 the plan have been met.

7 “(B) REVIEW AND COMMENT BY MANAGE-
8 MENT CONFERENCE.—In completing an evalua-
9 tion under subparagraph (A), the Administrator
10 shall submit the results of the evaluation to the
11 appropriate management conference for review
12 and comment.

13 “(C) REPORT.—

14 “(i) IN GENERAL.—In completing an
15 evaluation under subparagraph (A), and
16 after providing an opportunity for a man-
17 agement conference to submit comments
18 under subparagraph (B), the Adminis-
19 trator shall issue a report on the results of
20 the evaluation, including the findings and
21 recommendations of the Administrator and
22 any comments received from the manage-
23 ment conference.

24 “(ii) AVAILABILITY TO PUBLIC.—The
25 Administrator shall make a report issued

1 under this subparagraph available to the
2 public, including through publication in the
3 Federal Register and on the Internet.

4 “(D) SPECIAL RULE FOR NEW PLANS.—

5 Notwithstanding subparagraph (A), if a man-
6 agement conference submits a new comprehen-
7 sive conservation and management plan to the
8 Administrator after the date of enactment of
9 this paragraph, the Administrator shall com-
10 plete the evaluation of the implementation of
11 the plan required by subparagraph (A) not later
12 than 5 years after the date of such submission
13 and every 5 years thereafter.

14 “(7) UPDATES.—

15 “(A) REQUIREMENT.—Not later than 18
16 months after the date on which the Adminis-
17 trator makes an evaluation of the implementa-
18 tion of a comprehensive conservation and man-
19 agement plan available to the public under
20 paragraph (6)(C), a management conference
21 convened under this section shall submit to the
22 Administrator an update of the plan that re-
23 flects, to the maximum extent practicable, the
24 results of the program evaluation.

1 “(B) APPROVAL OF UPDATES.—Not later
2 than 120 days after the date on which a man-
3 agement conference submits to the Adminis-
4 trator an updated comprehensive conservation
5 and management plan under subparagraph (A),
6 and after providing for public review and com-
7 ment, the Administrator shall approve the up-
8 dated plan, if the Administrator determines
9 that the updated plan meets the requirements
10 of this section.

11 “(8) PROBATIONARY STATUS.—The Adminis-
12 trator may consider a management conference con-
13 vened under this section to be in probationary sta-
14 tus, if the management conference has not received
15 approval for an updated comprehensive conservation
16 and management plan under paragraph (7)(B) on or
17 before the last day of the 5-year period beginning on
18 the date on which the Administrator makes an eval-
19 uation of the plan available to the public under para-
20 graph (6)(C).”.

21 (d) FEDERAL AGENCIES.—Section 320 of the Fed-
22 eral Water Pollution Control Act (33 U.S.C. 1330) is
23 amended—

1 (1) by redesignating subsections (g), (h), (i),
 2 (j), and (k) as subsections (h), (i), (j), (k), and (m),
 3 respectively; and

4 (2) by inserting after subsection (f) the fol-
 5 lowing:

6 “(g) FEDERAL AGENCIES.—

7 “(1) ACTIVITIES CONDUCTED WITHIN ESTU-
 8 ARIES WITH APPROVED PLANS.—After approval of a
 9 comprehensive conservation and management plan
 10 by the Administrator, any Federal action or activity
 11 affecting the estuary shall be conducted, to the max-
 12 imum extent practicable, in a manner consistent
 13 with the plan.

14 “(2) COORDINATION AND COOPERATION.—

15 “(A) IN GENERAL.—The Secretary of the
 16 Army (acting through the Chief of Engineers),
 17 the Administrator of the National Oceanic and
 18 Atmospheric Administration, the Director of the
 19 United States Fish and Wildlife Service, the
 20 Secretary of the Department of Agriculture, the
 21 Director of the United States Geological Sur-
 22 vey, the Secretary of the Department of Trans-
 23 portation, the Secretary of the Department of
 24 Housing and Urban Development, and the
 25 heads of other appropriate Federal agencies, as

1 determined by the Administrator, shall, to the
2 maximum extent practicable, cooperate and co-
3 ordinate activities, including monitoring activi-
4 ties, related to the implementation of a com-
5 prehensive conservation and management plan
6 approved by the Administrator.

7 “(B) LEAD COORDINATING AGENCY.—The
8 Environmental Protection Agency shall serve as
9 the lead coordinating agency under this para-
10 graph.

11 “(3) CONSIDERATION OF PLANS IN AGENCY
12 BUDGET REQUESTS.—In making an annual budget
13 request for a Federal agency referred to in para-
14 graph (2), the head of such agency shall consider
15 the responsibilities of the agency under this section,
16 including under comprehensive conservation and
17 management plans approved by the Administrator.

18 “(4) MONITORING.—The heads of the Federal
19 agencies referred to in paragraph (2) shall collabo-
20 rate on the development of tools and methodologies
21 for monitoring the ecological health and water qual-
22 ity conditions of estuaries covered by a management
23 conference convened under this section.”.

24 (e) GRANTS.—

(1) IN GENERAL.—Subsection (h) (as redesignated by subsection (d)) of section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) is amended—

(A) in paragraph (1), by striking “other public” and all that follows before the period at the end and inserting “and other public or non-profit private agencies, institutions, and organizations”; and

(B) by adding at the end the following:

“(4) EFFECTS OF PROBATIONARY STATUS.—

“(A) REDUCTIONS IN GRANT AMOUNTS.—

The Administrator shall reduce, by an amount to be determined by the Administrator, grants for the implementation of a comprehensive conservation and management plan developed by a management conference convened under this section, if the Administrator determines that the management conference is in probationary status under subsection (f)(8).

“(B) TERMINATION OF MANAGEMENT CONFERENCES.—The Administrator shall terminate a management conference convened under this section, and cease funding for the implementation of the comprehensive conservation and

management plan developed by the management conference, if the Administrator determines that the management conference has been in probationary status for 2 consecutive years.”.

(2) CONFORMING AMENDMENT.—Section 320(i) the Federal Water Pollution Control Act (as redesignated by subsection (d)) is amended by striking “subsection (g)” and inserting “subsection (h)”.

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) (as redesignated by subsection (d)) is amended by striking subsection (j) and inserting the following:

“(j) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to the Administrator \$35,000,000 for each of fiscal years 2012 through 2017 for—

“(A) expenses relating to the administration of management conferences by the Administrator under this section, except that such expenses shall not exceed 5 percent of the amount appropriated under this subsection;

“(B) making grants under subsection (h);
and

1 “(C) monitoring the implementation of a
 2 conservation and management plan by the man-
 3 agement conference, or by the Administrator in
 4 any case in which the conference has been ter-
 5 minated.

6 “(2) ALLOCATIONS.—Of the sums authorized to
 7 be appropriated under this subsection, the Adminis-
 8 trator shall provide at least 80 percent per fiscal
 9 year for the development, implementation, and moni-
 10 toring of each conservation and management plan el-
 11 igible for grant assistance under subsection (h).”.

12 (g) RESEARCH.—Section 320(k)(1)(A) of the Federal
 13 Water Pollution Control Act (as redesignated by sub-
 14 section (d)) is amended—

15 (1) by striking “paramenters” and inserting
 16 “parameters”; and

17 (2) by inserting “(including monitoring of both
 18 pathways and ecosystems to track the introduction
 19 and establishment of nonnative species)” before “, to
 20 provide the Administrator”.

21 (h) NATIONAL ESTUARY PROGRAM EVALUATION.—
 22 Section 320 of the Federal Water Pollution Control Act
 23 (33 U.S.C. 1330) is amended by inserting after subsection
 24 (k) (as redesignated by subsection (d)) the following:

25 “(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

1 “(1) IN GENERAL.—Not later than 5 years
2 after the date of enactment of this paragraph, and
3 every 5 years thereafter, the Administrator shall
4 complete an evaluation of the national estuary pro-
5 gram established under this section.

6 “(2) SPECIFIC ASSESSMENTS.—In conducting
7 an evaluation under this subsection, the Adminis-
8 trator shall—

9 “(A) assess the effectiveness of the na-
10 tional estuary program in improving water
11 quality, natural resources, and sustainable uses
12 of the estuaries covered by management con-
13 ferences convened under this section;

14 “(B) identify best practices for improving
15 water quality, natural resources, and sustain-
16 able uses of the estuaries covered by manage-
17 ment conferences convened under this section,
18 including those practices funded through the
19 use of technical assistance from the Environ-
20 mental Protection Agency and other Federal
21 agencies;

22 “(C) assess the reasons why the best prac-
23 tices described in subparagraph (B) resulted in
24 the achievement of program goals;

1 “(D) identify any redundant requirements
2 for reporting by recipients of a grant under this
3 section; and

4 “(E) develop and recommend a plan for
5 eliminating any redundancies.

6 “(3) REPORT.—In completing an evaluation
7 under this subsection, the Administrator shall issue
8 a report on the results of the evaluation, including
9 the findings and recommendations of the Adminis-
10 trator.

11 “(4) AVAILABILITY.—The Administrator shall
12 make a report issued under this subsection available
13 to management conferences convened under this sec-
14 tion and the public, including through publication in
15 the Federal Register and on the Internet.”.

16 (i) CONVENING OF CONFERENCE.—Section
17 320(a)(2) of the Federal Water Pollution Control Act (33
18 U.S.C. 1330(a)(2)) is amended—

19 (1) by striking “(2) CONVENING OF CON-
20 FERENCE.—” and all that follows through “In any
21 case” and inserting the following:

22 “(2) CONVENING OF CONFERENCE.—In any
23 case”; and

24 (2) by striking subparagraph (B).

1 (j) GREAT LAKES ESTUARIES.—Section 320(m) of
 2 the Federal Water Pollution Control Act (as redesignated
 3 by subsection (d)) is amended by striking the subsection
 4 designation and all that follows through “and those por-
 5 tions of tributaries” and inserting the following:

6 “(m) DEFINITIONS.—In this section, the terms ‘estu-
 7 ary’ and ‘estuarine zone’ have the meanings given the
 8 terms in section 104(n)(4), except that—

9 “(1) the term ‘estuary’ also includes near coast-
 10 al waters and other bodies of water within the Great
 11 Lakes that are similar in form and function to the
 12 waters described in the definition of ‘estuary’ in sec-
 13 tion 104(n)(4); and

14 “(2) the term ‘estuarine zone’ also includes—

15 “(A) waters within the Great Lakes de-
 16 scribed in paragraph (1) and transitional areas
 17 from such waters that are similar in form and
 18 function to the transitional areas described in
 19 the definition of ‘estuarine zone’ in section
 20 104(n)(4);

21 “(B) associated aquatic ecosystems; and

22 “(C) those portions of tributaries”.

○